

Attorney Docket: 70231

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : FUCHS et al.  
Serial No : 09/895,917  
Confirm. No. : 9518  
Filed : June 29, 2001  
For : PIVOTING MIRROR...  
Art Unit : 2872  
Examiner : SHAFER, Ricky D  
Dated : April 14, 2004

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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3872  
#117  
Petition  
w/1  
Abandonment  
9/10/04

**PETITION TO REQUEST TO WITHDRAW ABANDONMENT**

Sir:

Applicant has received a Notice of Abandonment dated April 6, 2004, advising that the above-identified application is abandoned in view of failure to reply to the Office letter mailed on September 25, 2003.

Applicant received a Restriction Requirement from the U.S. Patent Office dated September 25, 2003. This Restriction Requirement did not set a shortened statutory period for reply. Therefore according to U.S. patent regulations the maximum statutory period applies and expires six months from the mailing date of September 25, 2003.

Applicant responded to the Restriction Requirement dated September 25, 2003 by filing an Election to Invention I on January 26, 2004. This election was submitted by facsimile to facsimile number 1-703-308-7382. A Certificate of Facsimile was sent therewith. Enclosed is a photocopy of the response and a

Certificate of Facsimile Transmission signed by Jennifer Spinning certifying that the facsimile was sent on January 26, 2004.

Also enclosed is a photocopy of the Transmission Verification Report printed by Applicant's facsimile machine indicating that the response was submitted as indicated.

CONCLUSION

Accordingly it is respectfully requested that the abandonment be withdrawn as a timely response was made to the Restriction Requirement of September 25, 2003, and that this response was submitted on January 26, 2004 well within the statutory period. It is also respectfully requested that all petition fees be waived as the applicant is clearly not at fault for the abandonment of the application.

Should any additional facts be significant in this application, the Patent Office is requested to inform Applicant.

Favorable action is respectfully requested.

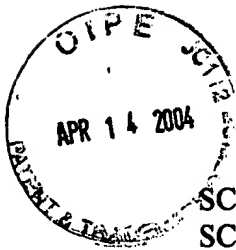
Respectfully submitted,

By: 

Theobald Dengler  
Reg. No. 34,575  
McGlew and Tuttle, P.C.  
(914) 941-5600

70231.15

Encls. Photocopy of Transmission Verification Report  
Photocopy of Certificate of Facsimile Transmission  
Photocopy of Response of January 26, 2004

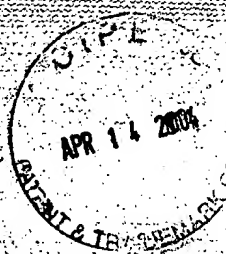


SCARBOROUGH STATION  
SCARBOROUGH, NEW YORK 10510-0827  
DATED: April 14, 2004

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING  
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS EXPRESS  
MAIL, ON TICKET NO. EV436440597US IN AN ENVELOPE ADDRESSED  
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22313-1450

McGLEW AND TUTTLE, P.C.

BY: Louisa Fante DATED: April 14, 2004



TRANSMISSION VERIFICATION REPORT

TIME : 01/26/2004 15:47  
NAME : MCGLEW AND TUTTLE PC  
FAX : 19149415855  
TEL : 19149415600

DATE, TIME  
FAX NO./NAME  
DURATION  
PAGE(S)  
RESULT  
MODE

01/26 15:46  
17033087382  
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REGISTERED PATENT ATTORNEY  
JOHN JAMES McGLEW J.D., NY, NJ, DC BARS  
D.W. DARREN KANG JD, NJ BAR only

THEOBALD J. DENGLE, PATENT AGENT  
HILDA S. McGLEW M.D., PATENT AGENT

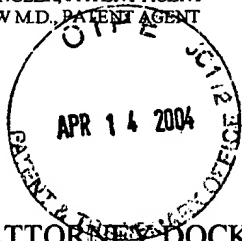
# McGLEW AND TUTTLE, P.C.

PATENT, TRADEMARK, COPYRIGHT, AND UNFAIR COMPETITION CAUSES

*Counselors at Law*

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Examiner : SHAFER, Ricky D  
Dated : January 26, 2004

**FAXED**  
1.26.03

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## CERTIFICATE OF FACSIMILE TRANSMISSION

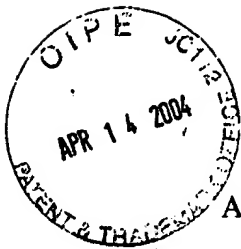
I HEREBY CERTIFY THAT THIS PAPER FOR SERIAL NO. 09/895,917 (4 PAGES IN ALL) IS BEING FACSIMILE TRANSMITTED TO THE PATENT AND TRADEMARK OFFICE FACSIMILE NUMBER 1-703-308-7382 ON THE DATE SHOWN BELOW.

Jennifer M. Spinning  
NAME OF PERSON SIGNING CERTIFICATION

[Signature]  
SIGNATURE

DATED: January 26, 2004  
McGLEW AND TUTTLE, P.C.  
SCARBOROUGH STATION  
SCARBOROUGH, NEW YORK 10510-0827  
TELEPHONE: (914) 941-5600  
FACSIMILE: (914) 941-5855

NOTE: IF THERE IS ANY ADDITIONAL FEE DUE PLEASE CHARGE IT TO OUR DEPOSIT ACCOUNT 13-0410 AND ADVISE US OF ANY CHARGE THAT YOU MAKE



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RESPONSE TO REQUIREMENT UNDER 35 USC § 121

Applicant hereby elects Invention I with claims 1, 2 and 9 - 13 directed to this invention.

Applicant respectfully traverses the requirement. It is Applicant's position that the sub-combination is the subject matter of claim 1 and that the various combinations are not in the form of a combination sub-combination relationship but are instead various different combinations all with a common sub-combination, namely all with a common sub-combination of claim 1. Restriction is not proper.

Where Applicant presents an independent claim which is a sub-combination and further dependent claims are presented which add further limitations or features no restriction is proper. Claim 1 can be considered a linking claim. However, more properly claim 1 should be considered the basic sub-combination wherein for example claims 2 and 3 are combinations which share the same sub-combination. It is noted that the MPEP does not provide restriction

where there is a sub-combination (for example claim 1) and there are further combinations (for example claims 2 and 3) and wherein the combination claims share the features of the sub-combination.

Reconsideration of the requirement is requested. Favorable action on the merits is requested.

Respectfully submitted  
for Applicant,

By: 

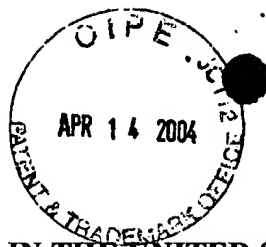
John James McGlew  
Registration No. 31,903  
McGLEW AND TUTTLE, P.C.

JJM:tf  
70231.12

Enclosed: Petition for Three Month Extension of Time

DATED: January 26, 2004  
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SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 13-0410.



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**PETITION UNDER 37 CFR 1.136 (a)**

Sir:

The Office Action dated September 25, 2003 provided for a shortened statutory period for response of one month.

The shortened statutory period expired October 25, 2003.

Since the attached response is being filed within the third month pursuant to 37 CFR 1.136(a) the Examiner is respectfully requested to charge attorney's deposit account no. 13-0410 the appropriate petition fee of \$950.00 (fee code 1253).

Respectfully submitted  
for Applicant(s),

By:

John James McGlew

Reg. No.: 31,903

For: McGLEW AND TUTTLE, P.C.

JJM:tf  
70231.14

DATED: January 26, 2004  
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SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 13-0410.